IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 216 of 1984
With
FIRST APPEAL No. 679 of 1984
With
CROSS OBJECTION No. 118 of 2007

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GENERAL MANAGER - Appellant(s)
Versus
KALPAADAN KOLLAINI AHMED & 4 - Respondent(s)

==========

Appearance :

MS ARCHANA PATEL for MR HARDIK C RAWAL for Appellant
Respondent : 1 UNSERVED
MR RN SHAH for Respondent : 2
Respondent(s) : 3 - 4 SERVED
MR RAJNI H MEHTA for Respondent : 5

FIRST APPEAL No. 679 OF 1984

Appellant : UNSERVED
MR RN SHAH for Respondent : 1
MS ARCHANA PATEL for MR HARDIK C RAWAL for Respondent : 2
Respondent(s) : 3 - 4 SERVED
MR RAJNI H MEHTA for Respondent : 5

CROSS OBJECTION No. 118 OF 2007 by : MR RAJNI H MEHTA

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 08/10/2007

COMMON ORAL JUDGMENT

These two Appeals and the Cross Objection arise from the common judgment and award dated 11th April, 1983 passed by the Motor Accident Claims Tribunal, Nadiad (hereinafter referred to as, **"the Tribunal"**) in Claim Petitions Nos.364/1980, 41/1980 and 514/1980 in so far as the award in the sum of Rs.44,650=00 has been passed in favour of the claimant in Claim Petition No.364/1980. After the elevation of the learned advocate representing the claimant, repeated notices have been issued to the claimant, which have remained unserved for want of the whereabouts of the claimant.

Learned advocate Mr.D.M.Ahuja is appointed by the Court to represent the claimant Kalapadan Kallaini Ahmed.

On 19th May, 1980, the claimant Kalapadan Kallaini Ahmed, a Fitter in the Oil and Natural Gas Corporation Limited at Cambay Project (hereinafter

referred to as, **“the ONGC**”), was travelling in an S.T.Bus bearing registration no.GTH-5303 on Baroda-Cambay route. At about 7:30 p.m. The S.T.Bus collided with an on-coming Tanker. In the said accident the claimant suffered fracture of right hand ulna. He had to take a long treatment. The fracture had to be repaired by placing nails. The nails had to be removed after around two years.

He filed Motor Accident Claim Petition No.364/1980 in the Tribunal and claimed compensation in the sum of Rs.2 lakhs. The claim was contested by the Gujarat State Road Transport Corporation, the appellant in First Appeal No.216/1984 (hereinafter referred to as, **“the Corporation”**). According to the Corporation the driver of the bus was careful. The accident in question occurred on account of the rash and negligent driving by the driver of the tanker. The owner of the tanker and its insurer, therefore, should be held responsible to pay compensation to the injured passengers.

The Tribunal, considering the panchnama

(Exh.16), came to the conclusion that both the offending vehicles were coming from the opposite side and had head-on collision in the middle of 28 feet wide road. The Tribunal, therefore, held both the drivers equally negligent.

As to the amount of compensation, the Tribunal found that the claimant was serving as a Fitter in the ONGC. His salary at the relevant time was Rs.1,350=00. He had to undergo three months' long treatment and had to spend for hospitalisation and medical treatment. Considering his age of 46 years, the Tribunal adopted purchase factor of ten years. The medical report suggested that the claimant had suffered 30% permanent disability in the right upper limb. Considering the above factors, the Tribunal awarded compensation in the sum of Rs.44,650=00 including a sum of Rs.10,000=00 under the head “pain, shock and suffering”; Rs.4,050=00 for loss of earnings for three months; Rs.6,000=00 for hospitalisation and Rs.24,000=00 for loss of future income. The Tribunal also awarded interest at the rate of 6% on condition that the amount was deposited

within three months of the award; failing which, the rate of interest was enhanced to 12% per annum.

Feeling aggrieved, the Corporation has preferred the above First Appeal No.216/1984. The claimant has preferred the above First Appeal No.679/1984. The Oriental Fire and General Insurance Company, the insurer of the offending tanker has filed the Cross Objection.

Ms.Patel has appeared for the Corporation. She has submitted that the Tribunal has erred in holding that the drivers of both the offending vehicles were equally rash and negligent. She has submitted that the bus was being driven on the left half of the road. But for the rash and negligent driving of the driver of the tanker the accident in question would not have occurred. She has also submitted that the claimant was the employee of the ONGC. He did not establish that on account of the accident his pay package was adversely affected. The claimant has thus not suffered actual loss of future income. The sum of Rs.24,000=00 awarded under the head was uncalled for.

She has also submitted that all that the claimant had suffered was a fracture, not more than Rs.7,000=00 ought to have been awarded under the head “pain, shock and suffering”.

Mr.Ahuja has appeared for the claimant. He has submitted that the claimant has preferred the above First Appeal No.679/1984 in so far as the claimant has been awarded a meager amount of compensation of Rs.44,650=00. He has submitted that considering the permanent partial disability suffered by the claimant and three months' long painful treatment that he had to undergo, the claimant ought to have been awarded higher amount of compensation under the head “future income” and atleast a sum of Rs.30,000=00 under the head “pain, shock and suffering”. He has submitted that the Tribunal has erred in assessing the claimant's monthly income of Rs.1,350=00 and in assessing the loss of future income at Rs.200=00 per month. He has submitted that the Tribunal ought to have taken into consideration the future increase in the salary.

Mr.Mehta has appeared for the Insurance Company. He has submitted that the Tribunal ought to have attributed greater negligence on the part of the driver of the offending bus. The liability of the Insurance Company ought to have been reduced to that extent.

As recorded hereinabove, the panchnama (Exh.16) reveals that on a 28 feet wide tar road the head-on collision occurred in the middle of the road. Evidently, drivers of both the offending vehicles were equally negligent in not averting the accident. I am, therefore, of the opinion that the Tribunal has rightly attributed equal negligence on the part of the drivers of both the offending vehicles.

As to the quantum of compensation, considering the fact that the claimant was 46 years of age and that he was earning monthly salary of Rs.1,350=00 and that he had suffered long medical treatment requiring some 44 days of hospitalisation in all, the compensation awarded by the Tribunal under different heads is just and proper. The higher rate of interest

awarded in case of failure to deposit the amount within the specified period is also reasonable.

For the aforesaid reasons, both the Appeals and the Cross Objection fail. The First Appeals Nos.216/1984 and 679/1984 and the Cross Objection No.118/2007 are dismissed. The parties will bear their own cost.

Registry will maintain copy of this judgment in each appeal.

(Ms. R.M.Doshit, J.)

/moin